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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/543,047	07/21/2005	Alan Kay Snell	1032.036	3882

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PO BOX 471581
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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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10/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/543,047

Applicant(s)

SNELL, ALAN KAY

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20,22,23 and 45-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20,22,23 and 45-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/24/07; 5/21/07
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20, 22 – 23 and 45 – 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finkel et al. (US 4,702,378) in view of Caveness (US 2003/0029740).

With reference to claim 20, Finkel et al. (hereinafter "Finkel") discloses a method of packaging a single, unused diaper comprising the steps of disposing the single, unused diaper within a substantially air impermeable encasement, the diaper being the only diaper within the encasement set forth in the figures.

The difference between Finkel and claim 20 is the provision that the packaged diaper is volumetrically reduced as claimed.

Caveness teaches a towel, which may ultimately function as a diaper, in an air sealed, or alternatively, vacuum-sealed compartment including an airtight seal as set forth on page 2, [0021]. The disclosure of vacuum sealing provides at least a partial vacuum whereby a pressure differential acts upon the encasement and towel to maintain the article in compressed state.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the diaper of Finkel to include a diaper in a vacuum

sealed compartment as taught by Caveness in order to provide a more compact, sanitary and portable article as taught by Caveness on page 2, [0003] – [0007].

As to claim 22, Finkel discloses a diaper folded into a substantially rectangular shape as set forth in figure 4.

Regarding claim 23, Finkel provides a folded diaper as set forth in figure 4. The fact that the diaper is rolled as opposed to folded in half does not patentably distinguish the claimed invention from the prior art as the diaper of Finkel is fully capable of being rolled as claimed.

With reference to claim 45, Caveness teaches the dimensions of the folded article on page 2, [0023]. The encasement as shown in figure 1 would reasonably fall within the claimed range because the area outside of the encasement would have to be at least 3 times the size of the folded article in order to fall outside of the range as claimed, and as shown in the figure, the encasement is not that large.

Regarding claim 46, Finkel in view of Caveness may not explicitly disclose the pressure as measured on the order of magnitude of millibars, however, the disclosure of vacuum sealing would ultimately provide a pressure similar to that claimed.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the amount of pressure in order to determine the most effective product since it has been held that where the general conditions of a claim are disclosed by the prior art, discovering the optimum or workable range involves only routine skill in the art.

As to claims 47 and 48, Finkel discloses at least one diaper accessory as set forth in col. 3, lines 3 – 8.

Response to Arguments

Applicant's arguments filed August 10, 2007 have been fully considered but they are not persuasive.

In response to the applicant's argument that there is no showing that vacuum sealing the diaper would result in a more compact, sanitary and portable kit. The examiner disagrees. As stated in the rejection, Caveness teaches such on page 2, [0003] – [0007]. The examiner contends that the package of Finkel would at least be more compact, sanitary and portable in that the area holding the diaper would be more compact as a result of vacuum sealing which would result in extra space within the package thereby providing the opportunity to house additional products as desired.

In response to applicant's argument that Caveness is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Caveness is in the field of applicant's endeavor because it relates to an absorbent article. Likewise, the invention of Caveness is concerned with the same problem as applicant, that being providing a more compact, disposable article through vacuum sealing.

Finkel provides the kit with a diaper (80). Caveness provides an absorbent product in an air sealed, or alternatively, vacuum-sealed compartment including an airtight seal as set forth on page 2, [0021]. Initially, the examiner notes that the substitution of one type of diaper for another is within the level of ordinary skill in the art. Furthermore, one of ordinary skill in the art would be motivated to employ the teachings of Caveness in the kit of Finkel because the reduction in space via the method of Caveness would ultimately provide more space in the kit of Finkel for additional products to provide a more adequate and diverse kit. This rationale is suggested in the references themselves and is knowledge generally available to one of ordinary skill in the art.

The examiner also notes that it is not necessary in every case to set forth any definition of the Ordinary Artisan. The "hypothetical person having ordinary skill in the art' to which the claimed subject matter pertains would, of necessity have the capability of understanding the scientific and engineering principles applicable to the pertinent art." *Ex parte Hiyamizu*, 10 USPQ2d 1393, 1394 (Bd. Pat. App. & Inter. 1988). This is demonstrated generally by six factors: (1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field. See MPEP 2141.03. Therefore, one of ordinary skill in at least the packaging art would be familiar with and appreciative of both methods of packaging and also be motivated to improve such methods.

Lastly, the declaration under 37 CFR 1.132 filed August 10, 2007 is insufficient to overcome the rejection of claims 20, 22 – 23 and 45 – 48 based upon Finkel in view of Caveness as set forth in the last Office action because: the declaration fails to set forth facts-, the information presented is not germane to the rejection at issue and the showing is not commensurate in scope with the claims.

The declaration provided references Application Serial No. 10/906,828 and all of the information relevant to that case. While there are some similarities between that application and the instant one, the arguments provided are not sufficient because they do not address the particulars of this application including the claims and the prior art references used in the rejection.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Michele Kidwell
Primary Examiner
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